

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Marlon D. Riddley,

Plaintiff,

v.

Joel Brott, Sheriff Sherburne County;
and Adam Walkley, Correctional Officer,

Defendants.

**MEMORANDUM OPINION
AND ORDER**

Civil No. 15-569 ADM/SER

Marlon D. Riddley, pro se.

Brian P. Taylor, Esq., and Jon K. Iverson, Esq., Iverson Reuvers Condon, Bloomington, MN, on behalf of Defendants.

I. INTRODUCTION

This matter is before the undersigned United States District Judge for a ruling on Plaintiff Marlon D. Riddley's Objections [Docket No. 30] to Magistrate Judge Steven E. Rau's July 25, 2016 Report and Recommendation [Docket No. 27] ("R&R"). In the R&R, Judge Rau recommends granting Defendants Joel Brott and Adam Walkley's ("Defendants") Motion for Dismissal [Docket No. 19]. After a de novo review of the record, and for the reasons stated below, Plaintiff's Objections are overruled and Judge Rau's R&R is adopted.

II. BACKGROUND¹

Plaintiff is a Minnesota inmate who was previously held in the Sherburne County Jail. On February 23, 2015, he filed this civil rights case under 42 U.S.C. § 1983 against "Joel Brott

¹ The factual background of this case is more fully set forth in the R&R and is incorporated by reference.

Sheriff Sherburne [sic] CO” and “Adam Walkley Correctional Officer.” Compl. [Docket No. 1] at 1. Plaintiff alleges that while at the Sherburne County jail, Walkley threw his money order in the trash and that he never received the funds into his inmate account. Id. at 5. He seeks monetary damages and to be transferred to the custody of the Department of Corrections (“DOC”) “for . . . fear of retaliation.” Id. at 7. Plaintiff does not state that he is suing Defendants in their individual capacities. See generally id.

Defendants moved to dismiss the Complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiff did not respond to the motion.

Judge Rau recommended granting Defendants’ motion dismissing the action but without prejudice. R&R at 5. In reaching this recommendation, Judge Rau construed Plaintiff’s § 1983 claim as being asserted against Defendants in their official capacities only, because the Complaint lacked an express statement that Defendants were being sued in their individual capacities. Id. at 3–4. Because the § 1983 claim was against Defendants in their official capacities, it was treated as a claim against their governmental employer, Sherburne County. Id. at 4. Judge Rau concluded that the Complaint failed to state a claim for which relief can be granted because the Complaint did not plausibly allege that Defendants’ actions were based on any policy, custom or practice of Sherburne County, much less a policy, custom or practice that was unconstitutional. Id. at 5. Plaintiff’s request to transfer from the Sherburne County jail was deemed moot because Plaintiff had since been transferred to a Minnesota correctional facility in Faribault. Id. at 3.

Plaintiff objects to the R&R, arguing among other things that he “did state who [he] was

serving in this matter which are both Defendants named.” Obj. at 1.

III. DISCUSSION

In reviewing a magistrate judge’s report and recommendation, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id.

Plaintiff’s Objection does not identify any error of fact or law in the R&R. This Court has conducted a de novo review of the R&R and concludes that the law was correctly applied to the facts of this case and that no errors of fact or law exist. Therefore, the R&R is adopted in its entirety.

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff Marlon D. Riddley’s Objections [Docket No. 30] to Magistrate Judge Steven E. Rau’s July 25, 2016 Report and Recommendation [Docket No. 27] are **OVERRULED**;
2. The Report and Recommendation [Docket No. 27] is **ADOPTED**;
3. Defendants’ Motion for Dismissal [Docket No. 19] is **GRANTED**; and

4. Plaintiff's claims are **DISMISSED without prejudice.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: September 15, 2016.